

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

08/24/2001

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

M. MINKOW
Deputy

LC 2001-000166

FILED: _____

STATE OF ARIZONA

B DON TAYLOR

v.

TED JAMES

J SCOTT HALVERSON

PHX CITY MUNICIPAL COURT
REMAND DESK CR-CCC

MINUTE ENTRY

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Sec. 16, and A.R.S. Sec. 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the Phoenix City Court, and the memoranda submitted by counsel.

The Appellant was charged with committing two counts of driving while under the influence of intoxicating liquor in violation of A.R.S. Sec. 28-1381(A)(1) and (A)(2), both Class 1 misdemeanors alleged to have occurred on June 18, 2000. Appellant filed a Motion to Suppress the results of the blood alcohol tests. On March 13, 2001, Judge Michael Lester of the Phoenix Municipal Court denied that motion after hearing the testimony of several witnesses. The parties both waived their right to a jury trial and submitted the case to Judge Lester for a determination of guilt or innocence based upon his review of the police report and breath test records. Judge Lester returned a guilty verdict on both charges. On March 13, 2001,

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

08/24/2001

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

M. MINKOW
Deputy

LC 2001-000166

Appellant was ordered to serve 90 days in jail, 60 days to be suspended depending upon Appellant's successful completion of an alcohol screening and counseling program (the State had filed an allegation that Appellant had previously been convicted of driving while under the influence), a fine of \$885.00, and ordered that Appellant pay \$50.00 towards the cost of his court-appointed counsel. Appellant filed a timely Notice of Appeal.

The only issue presented concerns the trial judge's denial of Appellant's Motion to Suppress the results of the blood alcohol test. Specifically, Appellant claims that a necessary requirement found in A.R.S. Sec. 28-1323(A)(5): that the records of periodic maintenance of the blood alcohol measuring devise are not present to show that the devise was in proper operating condition. Apparently an electronic database reveals that one of the steps (the "blow-at-the-wrong-time" step) was not electronically recorded. However, Appellant ignores the testimony of the State's witness, Jennifer Valdez, who testified that the blow-at-the-wrong-time step would have been performed even though no electronic record was completed. Reporter's Transcript of March 13, 2001 at 66.

This Court may not reverse the trial judge's ruling on the admissibility of evidence without a finding that the trial judge abused his discretion.¹ Where a trial judge's ruling is supported by substantial evidence in the record, this Court must affirm that trial judge's ruling.² This Court must view the facts in a light which is most favorable to upholding the trial judge's ruling, resolving reasonable inferences against the Appellant.³ This Court must also defer to the trial judge's findings where there are conflicts within the evidence.⁴ The trial judge as a fact finder occupies the most advantageous position of weighing the credibility, veracity, and reliability of witnesses and documentary evidence.

¹ State v. Morales, 170 Ariz. 360, 364, 824 P.2d 756, 760 (App. 1991).

² Pharo v. Tucson City Court, 167 Ariz. 571, 810 P.2d 569 (App. 1990).

³ State v. Guerra, 161 Ariz. 289, 778 P.2d 1185 (1989).

⁴ State v. Plew, 155 Ariz. 44, 745 P.2d 102 (1987).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

08/24/2001

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

M. MINKOW
Deputy

LC 2001-000166

In this case the trial judge stated in his ruling denying Appellant's Motion to Suppress:

Now looking at all the evidence presented in this case, I think the State's position is correct that based on the hardcopy documentation they have, they will make a prima facie showing that this breath test should be submitted to the jury and then the defense through its expert witness can attempt any way it wishes to attack that breath test. But based on what I've heard, the breath test will come in in this case, of (sic.) the statutory method.

Reporter's Transcript of March 13, 2001 at 81.

There is clearly substantial evidence in the record in the form of Ms. Valdez' testimony to support the trial judge's finding. Therefore, the trial judge's determination must be affirmed. IT IS ORDERED affirming the judgments of guilt and sentences imposed. IT IS FURTHER ORDERED remanding this back to the Phoenix City Court for all further proceedings.